IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO.60 OF 2004

Kolhapur Sheti Utpan Bazar Samiti Petitioner

Vs.

State of Maharashtra & anr. Respondents

Mr.A.Y.Sakhare, Senior Counsel with Mr.Sarang Aradhye
and Ms.Monika Khade for petitioner.
Mrs.G.P.Mulkar, AGP for Respondents.

CORAM: B.H.MARLAPALLE,J.
June 14, 2005.

ORAL ORDER:

1. Heard Mr.Sakhare, the learned Senior Counsel with Mr.Aradhye for the petitioner and Mrs.Mulekar, the learned AGP for respondents.

2. In this revision application filed under Section 18(3) of the Land Acquisition Act, 1894 ("the Act" for short) the order passed by the Collector dated 26-2-2004 rejecting the application filed under Section 18 of the said Act has been challenged.

3. The undisputed relevant dates are as under:

. (a) The Land Acquisition Officer passed his award under Section 11 on 6-10-2003; (b) the notice under Section 12(2) of the Act was received by the

land owners on 13-10-2003; (c) they received compensation amount under protest on 13-1-2004; (d) they applied for a certified true copy of the award on 29-1-2004; (e) a certified true copy was received on 9-2-2004 and (f) they submitted the application under Section 18(1) of the Act on 23-2-2004.

4. By the impugned order the Special Land Acquisition Officer rejected the said application on the ground that it was not filed within the period of six weeks from 13-10-2003. There is no dispute that if the period of limitation is counted from 13-10-2003, the date of submission of application being 23-2-2004, the application was not submitted within a period of forty-two days or six weeks. The Full Bench of this Court on a reference made in C.R.A. No.599 of 1992 rendered a unanimous decision on 27-7-2001 on the issue as to whether Section 5 of the Limitation Act can be made applicable for extension of the period of limitation prescribed under Section 18(2) of the Act. The answer given by the Full Bench on relying upon the decision of the Supreme Court in the case of Officer on Special Duty (Land Acquisition) & Anr. v. Sham Manilal Chandulal & ors. reported in **(1996) 9 SCC 414** reads as under:

> "...We must, therefore, hold that Sub-section (3) of Section 18 notwithstanding, the Collector under Section 18 (1) of the Act performs a statutory function, and does not act as a Court. The dichotomy of the collector and the Court cannot be lost sight of. Sub-section (2) of Section 29 of the Act cannot be applied to the proviso to Sub-section (2) of Section 18. The Collector is not a Court when he acts as a statutory authority under Section 18(1) and, therefore, Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under the proviso to Sub-section (2) of Section 18."

The above quoted view of the Full Bench is binding on me. However, Mr.Sakhare, the learned Senior Counsel referred to the subsequent decision of the Supreme Court in the case of Orissa Industrial Infrastructure Development Corporation v. Supai Munda reported in **2004 (5) ALL MR (S.C.) 159**. In the said case the application under Section 18(1) of the Act was

submitted late by one day, that is when the application was submitted it was 43 days from the date of notice under Section 12(2) of the Act was issued to the respondents-claimants on 27-7-1992. Their Lordships noted that the land owners were illiterate persons who could not put their signatures for acknowledgement of the receipt, was an excuse and it clearly demonstrated that the land owners did not receive the notice under Section 12(2) of the Act personally and if that be so the notice upon the respondent was not duly served. It was under these circumstances that the Apex Court allowed the revision applications and directed the Collector to make a reference. This decision is not applicable to the instant case when it is admitted that the notice under Section 12(2) of the Act was received by the claimants on 13-10-2003 and the application was submitted on 23-2-2004.

5. The Civil Revision Application, therefore, fails and the same is hereby rejected summarily.

(B.H.MARLAPALLE,J.)